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EXAMINER

JULES, FRANTZ F

ART UNIT

PAPER NUMBER

3617

DATE MAILED: 01/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/050,937

Applicant(s)

ZICHA, JAN HERMAN

Examiner

Frantz F. Jules

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— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 March 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☐ Other: ____.

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DETAILED ACTION

1. It is noted that on page 1 of the specification applicant lists personnel information such as name, address, and phone number under Inventor subtitle. This is not conforming to current office practice as these info have been provided already in Applicant Data Sheet.

Also, it is not necessary to list subtitles such as Cross-Reference To Related Application, Statement Regarding Federally Sponsored Research or Development, Reference to Sequence Listing, A Table, Or A Computer Program Listing Compact Disc Appendix on page 1 of the specification if no information is available like in the instant case.

Oath/Declaration

2. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not identify the mailing or post office address of each inventor. A mailing or post office address is an address at which an inventor customarily receives his or her mail and may be either a home or business address. The mailing or post office address should include the ZIP Code designation. The mailing or post office address may be provided in an application data sheet or a supplemental oath or declaration. See 37 CFR 1.63(c) and 37 CFR 1.76.

The date of execution of the Declaration has not been provided.

Drawings

3. The drawings are objected to because:

Of the informalities noted on the draftman's sheet, PTO 948.

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Applicant is required to submit a proposed drawing correction in reply to this Office action. However, formal correction of the noted defect may be deferred until after the examiner has considered the proposed drawing correction. Failure to timely submit the proposed drawing correction will result in the abandonment of the application.

Specification

4. The disclosure is objected to because of the following informalities:

The abstract of the disclosure is currently in two separate paragraphs. Abstract is to be in a single paragraph format. Also, the abstract as such contains more than 150 words.

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Brief Description of The Drawings is not conforming to current office practice as they are more specific than necessary. Read Brief Description of the Drawing section in Patent number 3,831,842 which illustrates the right amount of info needed on the drawings.

Also, the designation Drawing No.1 should be changed to --Fig. 1-- on page 5, line 5 of the specification. Any reference to a designation "Drawing No. " in the specification should be replaced by an equivalent --Fig. No. --. Similar changes should be made to

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"Drawing No. 1", "Drawing No. 2", "Drawing No. 3" on page 6, "Drawing 2", "Drawing No. 4", "Drawing No. 5", "Drawings 1 through 5" on page 7, "Drawing 3" and "Drawing 4" on page 9.

Moreover, on page 5, line 8, the designation "Section A-A" should be replaced by --Section I-I--. It is suggested that Roman numeral designation be used instead of current letter designation to identify a section through the specification. Similar changes should be made to "Section B-B" in line 8, "Section A-A" on page 6, line 10, "Section B-B" in line 11.

Detail Description of The Drawings section and the rest of the specification include reference to claim No's which is not conforming to current office practice. Any reference to a claim No. should be removed from the specification such as claim 18 , claim 16, on page 6, claim 20 , claim 19 for example.

On page 2, line 20, the word "situ" should be changed to --situs--. Similar change should be made to page 3, line 13.

On page 8, line 1, the word "booted", first occurrence, should be deleted.

In the Detail Description Of The Invention section, descriptive subtitles A to F which are currently Italicized should be changed to normal font. For instance, in subtitle B, the designation "*Rubber boot (4), top elastomeric rail pads (5) and elastomeric bottom pads (6)*" should be changed to --Rubber boot (4), top elastomeric rail pads (5) and elastomeric bottom pads (6)--.

On page 10, line 3, the subtitle "a. Purposes served by the block retainer" should be changed to --Industrial Application-- or an equivalent term.

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The following outlines the content of the specification:

Content of Specification

- (a) Title of the Invention: See 37 CFR 1.72(a) and MPEP § 606. The title of the invention should be placed at the top of the first page of the specification unless the title is provided in an application data sheet. The title of the invention should be brief but technically accurate and descriptive, preferably from two to seven words may not contain more than 500 characters.
- (b) Cross-References to Related Applications: See 37 CFR 1.78 and MPEP § 201.11.
- (c) Statement Regarding Federally Sponsored Research and Development: See MPEP § 310.
- (d) Incorporation-By-Reference Of Material Submitted On a Compact Disc: The specification is required to include an incorporation-by-reference of electronic documents that are to become part of the permanent United States Patent and Trademark Office records in the file of a patent application. See 37 CFR 1.52(e) and MPEP § 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text were permitted as electronic documents on compact discs beginning on September 8, 2000.

Or alternatively, Reference to a "Microfiche Appendix": See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.
- (e) Background of the Invention: See MPEP § 608.01(c). The specification should set forth the Background of the Invention in two parts:
 - (1) Field of the Invention: A statement of the field of art to which the invention pertains. This statement may include a paraphrasing of the applicable U.S. patent classification definitions of the subject matter of the claimed invention. This item may also be titled "Technical Field."
 - (2) Description of the Related Art including information disclosed under 37 CFR 1.97 and 37 CFR 1.98: A description of the related art known to the applicant and including, if applicable, references to specific related art and problems involved in the prior art which are

solved by the applicant's invention. This item may also be titled "Background Art."

- (f) Brief Summary of the Invention: See MPEP § 608.01(d). A brief summary or general statement of the invention as set forth in 37 CFR 1.73. The summary is separate and distinct from the abstract and is directed toward the invention rather than the disclosure as a whole. The summary may point out the advantages of the invention or how it solves problems previously existent in the prior art (and preferably indicated in the Background of the Invention). In chemical cases it should point out in general terms the utility of the invention. If possible, the nature and gist of the invention or the inventive concept should be set forth. Objects of the invention should be treated briefly and only to the extent that they contribute to an understanding of the invention.
- (g) Brief Description of the Several Views of the Drawing(s): See MPEP § 608.01(f). A reference to and brief description of the drawing(s) as set forth in 37 CFR 1.74.
- (h) Detailed Description of the Invention: See MPEP § 608.01(g). A description of the preferred embodiment(s) of the invention as required in 37 CFR 1.71. The description should be as short and specific as is necessary to describe the invention adequately and accurately. Where elements or groups of elements, compounds, and processes, which are conventional and generally widely known in the field of the invention described and their exact nature or type is not necessary for an understanding and use of the invention by a person skilled in the art, they should not be described in detail. However, where particularly complicated subject matter is involved or where the elements, compounds, or processes may not be commonly or widely known in the field, the specification should refer to another patent or readily available publication which adequately describes the subject matter.
- (i) Claim or Claims: See 37 CFR 1.75 and MPEP § 608.01(m). The claim or claims must commence on separate sheet (37 CFR 1.52(b)). Where a claim sets forth a plurality of elements or steps, each element or step of the claim should be separated by a line indentation. There may be plural indentations to further segregate subcombinations or related steps. See 37 CFR 1.75 and MPEP § 608.01(i)-(p).
- (j) Abstract of the Disclosure: See MPEP § 608.01(f). A brief narrative of the disclosure as a whole in a single paragraph of 150 words or less commencing on a separate sheet following the claims. In an international application which has entered the national stage (37 CFR 1.491(b)), the applicant need not submit an abstract commencing on a separate sheet if

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an abstract was published with the international application under PCT Article 21. The abstract that appears on the cover page of the pamphlet published by the International Bureau (IB) of the World Intellectual Property Organization (WIPO) is the abstract that will be used by the USPTO. See MPEP § 1893.03(e).

- (k) Sequence Listing. See 37 CFR 1.821-1.825 and MPEP §§ 2421-2431. The requirement for a sequence listing applies to all sequences disclosed in a given application, whether the sequences are claimed or not. See MPEP § 2421.02.

Appropriate correction is required.

Claim Objections

5. Claims 1-20 are objected to because of the following informalities:

In claim 1, line 2, the word "each" should be changed to --separate--.

In claim 1, line 1, the phrase "What I claim as my invention is an internally resilient railroad tie" should be replaced by --An internally resilient railroad tie--.

In claim 16, line 1, the phrase "What I claim as my invention is the block" should be replaced by --A block--. Similar change should be made to claim 20, line 1.

In claim 1, lines 2-3, the phrase "further equipped as follows" should be replaced by --the resilient railroad tie--.

In claim 18, line 3, the phrase "spring leaves" should be replaced by --leaf springs--.

Similar change should be made in claim 19, line 3.

In claim 18, line 5, the phrase "leaves" should be replaced by --the leaf springs--.

Similar change should be made in claim 19, line 4.

In claim 18, line 5, the phrase "as shown on the Drawing 3" should be deleted.

In claim 19, line 5, the phrase "as shown on the Drawing 4" should be deleted.

Claims 16, 18-19 should be deleted and replaced by the revised claims:

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-- 16. An internally resilient railroad tie apparatus equipped with block retainers in railroad ties made of concrete so as to hold blocks including a boot with an elastomeric pad positioned at the bottom of said boot which are received in the ties for supporting rails forming complete rail tie assemblies, said apparatus comprising:

a device for retaining the blocks in the tie apparatus such that said rail tie assemblies may be lifted and moved by rail during track installation and maintenance, and for releasing the blocks from the ties when the elastomeric pad or the boot has to be replaced or removed.

18. The internally resilient railroad tie of claim 16 wherein the block retainers comprise a cast iron insert equipped with an anchor member for anchorage in the concrete tie, and with a curved slot at the top of the anchor member to receive leaf springs that are secured by a vertical pin inserted into aligned holes on top of the anchor member.

19. The internally resilient railroad tie of claim 16 wherein said block retainers comprise a cast iron insert equipped with an anchor having a thread extension for attachment to a steel tie case, said anchor member having a curved slot at the top to receive leaf springs that are secured by a vertical pin inserted into aligned holes on top of the anchor member--.

Claims 2-15, 17, 19 are rejected as being dependent upon rejected base claims 1, 16.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

6. Claims 1-20 are rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

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The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. The claim(s) must be in one sentence form only. Note the format of the claims in the patent(s) cited.

Claims 1-20 are repleted with indefinite terms such as, recited structures which have not been previously defined, double inclusion term, improper preambles in independent claims etc., which need to be corrected. Also, claim 1 is written in multiple sentences which is not conforming to current office standard of claim structure which require any claim to be in a single sentence. The followings are examples, among others, of indefinite language in the claims:

In claim 1, line 1, the phrase "a tie" is confusing as it is unclear how it relates to previously recited an internally resilient railroad tie.

Claim 1 recites the limitation "the tie case" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the boot" in line 3. There is insufficient antecedent basis for this limitation in the claim.

In claim 1, line 6, the phrase "each tie" is confusing as it suggests a plurality of ties while only one tie has been previously recited.

Claim 1 recites the limitation "the track" in line 6. There is insufficient antecedent basis for this limitation in the claim.

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In claim 1, line 9, the word "its" is confusing as it is unclear from the context of the claim which particular one of the previously recited structures applicant is referring to.

Claims 2-15 lack an end period at the end of the sentence which is not conforming to office standard format for a claim which requires a period at the end of each claim.

Preambles of the independent claims need to be similar to that of a dependent claim. In the instant case, claims 2-15 recites in the preamble "the closure of claim 1". This phrase need to be replaced by --The internally resilient railroad tie of claim 1--.

Similarly, in claim 17-19, the phrase "The closure of claim 16" need to be replaced by --The block of claim 1--.

Various types of lack of antecedent problems and improper preamble problems exist in claims 16-20 which need to be fixed. Applicant is being referred to columns 11, lines 51-68, column 12, lines 1-68 of US patent No. 4,609,144 to see a listing of proper claim format of both independent and dependent claims. Also, see new claims 16, 18-19 above under objection section.

Regarding claim 15, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim 17, is confusing as it unclear what applicant is referring to by the recitation of "the block retainer and the block are not contiguous in service because the block retainer allows each block to follow the deflection of elastomers and the uplift wave of the rail within certain travel". It is suggested that this claim be cancelled.

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Claim 20 recites the limitation "the internally resilient tie" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 20 recites the limitation "the non-metallic collar" in line 1. There is insufficient antecedent basis for this limitation in the claim.

In claim 20, line 3, the designation "and/or" is confusing as being inclusive or exclusive language. It is unclear whether applicant is claiming both structures or one of the structures. Similar problem exists in line 4.

Claim 20 recites the limitation "the overhang-shaped elastomeric boot's edge" in lines 3-4. There is insufficient antecedent basis for this limitation in the claim.

Claim 20 recites the limitation "the lip of the boot" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim 20 recites the limitation "the tie's interior" in line 6. There is insufficient antecedent basis for this limitation in the claim.

Claim 20 recites the limitation "the boot" in line 6. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-7, 8, 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sonnevile et al (US 6,364,214) in view of Vanhonacker (6,027,033).

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Claims 1-2, 8, 20

Sonneville et al disclose an internally resilient railroad tie comprising two blocks (3) independent of each other under separate rail, placed in a tie case (4), each block is placed in an elastomeric boot (1) having an elastomeric bottom pad (2) is supplied and applied in various values of stiffness to compensate for lack of excess of overall track stiffness. The block (1) having a collar (1A) constituting an overhang providing sealing between the tie and the block as illustrated in Fig. 5. The block and or the tie being made of concrete material as per the disclosure of column 1, lines 13-17.

Sonneville discloses all the features as listed above but does not show an internally resilient railroad tie having an elastomeric pad placed on the top of the block under a rail. The general concept of providing an elastomeric pad between the bottom surface of a rail and the top of a block is well known in the art as illustrated by Vanhonacker which discloses in Fig. 1, an elastomeric pad (3) between a block (1) and a bottom surface of a rail (8). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Sonneville to include the use of an elastomeric pad placed on the top of the block under a rail in his advantageous internally resilient railroad tie as taught by Vanhonacker in order to reduce reduce the first resonance frequency value in the system thereby reducing vibration in the tie assembly.

Claims 3-7

Regarding using a block made of either steel, cast iron, concrete/steel combination, plastic, or wood as recited in claims 3-7, It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Sonneville et al to include the use

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of a block made of either steel, cast iron, concrete/steel combination, plastic, or wood in his advantageous system, as rail holder is a common and everyday occurrence throughout the railway tie design art and the specific use of a block made of either steel, cast iron, concrete/steel combination, plastic, or wood would have been an obvious matter of design preference depending upon such factors as the weight of the object to be carried by the tie assembly, the amount of resonant frequency or vibration one is willing to achieve, the dynamic stiffness value of the pad; the ordinarily skilled artisan choosing the best stress profile corresponding to a particular loading imposed on the tie assembly which would most optimize the cost and performance of the device for a particular application at hand, based upon the above noted common design criteria.

9. Claims 9-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sonnevile et al (US 6,364,214) and Vanhonacker (6,027,033) as applied to claim 1 above, and further in view of McCallum (US 814,796).

Claims 9-15

Sonneville et al, and Vanhonacker teach all the limitations of claims 9-15 except for an internally resilient railroad tie having a tie case made of steel or of cast iron and adapted to be placed on either ballast, piles, longitudinal beams, or a firm foundation. The general concept of providing a tie case made of steel or of cast iron in a railroad tie assembly is well known in the art as illustrated by McCallum which discloses in column 1, lines 24-29, a rail tie case made of steel or other suitable material. Also, the general concept of placing a rail tie case of a railway system on either ballast, piles, longitudinal beams, or a firm foundation falls within the real of common knowledge as obvious

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mechanical expedient depending on the area where a track structure is to be laid. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Sonnevile et al to include the use of a tie case made of steel or of cast iron in his advantageous resilient railroad tie as taught by McCallum in order to reduce maintenance cost in the system while increasing its ability to withstand shock load. In addition, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Sonnevile et al to include the use of positioning a rail tie case of a railway system on either ballast, piles, longitudinal beams, or a firm foundation in his advantageous resilient railroad tie in order to accommodate the track system to various areas without having to use a concrete bed.

10. Claims 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sonnevile et al (US 6,364,214) in view of McCourt (US 1,214,339).

Claims 16-17

Sonneville et al teaches all the limitations of claims 16-17 except for an internally resilient tie having a releasable device for retaining blocks in the tie members. The general concept of providing a releasable device for retaining blocks in a tie member is well known in the art as illustrated by McCourt which disclose a device constituted by item members (12, 14, 16) for retaining blocks in a tie member, see fig. 5. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Sonnevile to include the use of a releasable retaining device in his advantageous resilient tie as taught by McCourt in order to reduce the amount of vibration in the tie assembly.

Allowable Subject Matter

11. Claims 18-19 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims. None of the prior arts of record suggests an internally resilient railroad tie having a releasable device for retaining the blocks in the tie members, wherein the block retainers comprise a cast iron insert equipped with an anchor member for anchorage in the concrete tie, and with a curved slot at the top of the anchor member to receive leaf springs that are secured by a vertical pin inserted into aligned holes on top of the anchor member in the manner defined in the instant claims 18-19. A corrected version of claims 18-19 is provided for applicant to use in response to this office action.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

Beigl et al, Farese et al, and Prater are cited to show related railroad track system having concrete block that are resiliently mounted on railroad ties.

Armsen is cited to show a related elastomeric railroad boot including an elastomeric pad at the bottom for holding a block in a tie assembly.

Vanotti is cited to show a related rail attachment device having an elastomeric pad at the bottom of the rail.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantz F. Jules whose telephone number is (703) 308-

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8780. The examiner can normally be reached on Monday-Thursday and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph S. Morano can be reached on (703) 308-0230. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-7687 for After Final communications.


Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

Frantz F. Jules
Examiner
Art Unit 3617

FFJ

January 12, 2003

FRANTZ F. JULES
PATENT EXAMINER

A handwritten signature in black ink, appearing to read 'Frantz F. Jules', with a stylized flourish at the end.